

【附錄一】

Memorandum

From: Andrew Lurié – The Humane Society of the US – Animal Protection Litigation; and
Masha Kalinina – Humane Society International – Wildlife
Date: March 15, 2014
Re: The impact of excluding wildlife-related commerce from the Wildlife Conservation Act on
Taiwan’s ability to join the TPP

Question: Will excluding wildlife-related commerce from the Wildlife Conservation Act (WCA) positively impact Taiwan’s proposed membership in the Trans-Pacific Partnership (TPP)?

Short Answer: Certainly not. In fact, it may damage Taiwan’s chances of joining the TPP.

Analysis: The Taiwanese government is proposing to set up so-called “Free Economic Pilot Zones (FEPZ)” —essentially free trade zones within Taiwan—with separate laws regulating such zones. In the latest proposed FEPZ regulations, the government has proposed that any wildlife-related commerce (including breeding, keeping, display, trading, and exhibit of wildlife and their products) in the FEPZs be excluded from the application of Wildlife Conservation Act. Instead, the governing FEPZ authority would have the authority to approve permits for such commercial activity in wildlife and wildlife products.

The government rationale for this proposal is that it is necessary in order for Taiwan to be considered for TPP membership and that they are following the lead of Singapore, who is already a TPP member. To the contrary, however, weakening Taiwan’s protections of wildlife and trade in wildlife and wildlife products—as the proposal is likely to do—would not help Taiwan gain TPP membership. In fact, it may render it more difficult for Taiwan to join the TPP.

Although negotiations are still ongoing, the current parties to the TPP appear to be making strong commitments to protect wildlife and to prevent the illegal trade. In the USTR Green Paper on Conservation and the Trans-Pacific Partnership, the United States (US) has underscored the importance of wildlife protection to its conception of a successful agreement. Through the TPP, the US is seeking “a coordinated response to harmful illegal wildlife and wild plant trade,” noting that the “TPP are source, transit or destination countries for [illegal trade in wildlife].”¹ The US further explains that “Illegal trade in wildlife is significant worldwide. Its global scale presents several potential threats to both the environment and regional security, including loss of biodiversity, introduction of invasive alien species and growth of global criminal networks.”²

And the United States is not alone; the other parties to the TPP also appear ready to undertake significant obligations related to wildlife protection. According to a recently leaked draft of the TPP Environment Chapter, Taiwan would be required to do the following in order to join the TPP:

¹ USTR Green Paper on Conservation and the Trans-Pacific Partnership, *available at* <http://www.ustr.gov/about-us/press-office/fact-sheets/2011/ustr-green-paper-conservation-and-trans-pacific-partnership>.

² USTR Green Paper on Conservation and the Trans-Pacific Partnership, *available at* <http://www.ustr.gov/about-us/press-office/fact-sheets/2011/ustr-green-paper-conservation-and-trans-pacific-partnership>.

- Take appropriate measures to protect and conserve wild fauna and flora that are at risk within its territory, including measures to conserve the integrity of designated natural protected areas;³
- Maintain or strengthen government capacity and institutional frameworks to promote sustainable forest management and wild fauna and flora conservation, and endeavor to enhance public participation and transparency therein;⁴
- Endeavor to develop and strengthen cooperation and consultation with interested non-governmental entities in order to enhance implementation of measures to combat the illegal take of or illegal trade in wild fauna and flora.⁵
- Adopt or maintain appropriate measures that allow it to take action to prohibit the trade, transshipment or transaction within its territory of wild fauna and flora that, based on credible evidence, were taken or traded in violation of that Party's law or a foreign law, the primary purpose of which is to conserve, protect or manage wild fauna or flora. Such measures should include sanctions or penalties at levels which act as a deterrent to such trade, transshipments or transaction.⁶

All of these provisions evince concern for protecting wildlife (particularly at-risk wildlife) and seek to ensure that all TPP parties have the necessary national laws to meet these commitments. And with the Wildlife Conservation Act, Taiwan likely has the proper framework in place already. Limiting the application of the WCA would put Taiwan's ability to meet the wildlife conservation obligations required under the TPP in jeopardy.

Given the tenor of the leaked Environment Chapter, there is virtually no risk that the Wildlife Conservation Act could be viewed as too protective of wildlife for TPP purposes. Moreover, even if it is determined that the current version of the WCA fails to allow Taiwan to fulfill the TPP environmental commitments, setting up FEPZs with independent laws on wildlife trade would constitute an overly onerous methods of coming into compliance, given that Taiwan would need the new laws to apply within its entire jurisdiction, not merely in certain zones. Retaining the structure of having the WCA apply to the entire country and simply amending the necessary WCA provisions would prove much more manageable.

³ Draft TPP Environment Chapter (leaked), Article SS.17.4(a) (attached as Exhibit 1).

⁴ Draft TPP Environment Chapter (leaked), Article SS.17.4(b) (attached as Exhibit 1).

⁵ Draft TPP Environment Chapter (leaked), Article SS.17.4(c) (attached as Exhibit 1).

⁶ Draft TPP Environment Chapter (leaked), Article SS.17.5 (attached as Exhibit 1).